IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20317 of 2006

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KHIRA STEEL WORKS PRIVATE LTD. - Petitioner(s)
Versus
GANESHBHAI LALBACHAN YADAV - Respondent(s)

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Appearance :
MR KM PATEL for Petitioner(s) : 1,
MR RD RAVAL for Respondent(s) : 1,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 26/12/2006

ORAL JUDGMENT

Heard the learned advocates.

This petition has been preferred by the employer-Industry (hereinafter referred to as, **“the**

Industry”) against the judgment and order dated 30th June, 2006 passed by the Industrial Tribunal, Ahmedabad in Application (IT) Permission No.285/1997 in pending Reference (IT) No.23/1995. The respondent (hereinafter referred to as, **“the Workman”**) is an employee of the Industry who is sought to be dismissed from service.

It is not in dispute that the workman was a protected workman within the meaning of Section 33(4) of the Industrial Disputes Act, 1947 (hereinafter referred to as, **“the Act”**). Pending the above reference, for the alleged acts of misconduct a disciplinary proceeding was held against the Workman. The Inquiry Officer opined that the Workman was guilty of the alleged misconduct. Pursuant to the said finding, on 7th November, 1996 the Workman was given a notice to show-cause why, for the guilt proved against him, he should not be dismissed from service. On receipt of the reply to the said show-cause notice, the Industry decided to dismiss the Workman from service. As the Workman was a protected workman, the Industry was required to seek prior

permission before dismissing the Workman from service. The Industry moved the above referred Application (IT) Permission No.285/1997 for permission as envisaged by Section 33(3) of the Act. In the said Application, the Industry made a categorical statement that the Industry had decided to dismiss the Workman from service. Nevertheless, the Tribunal has held that in absence of an order of dismissal from service the application for permission was premature and has accordingly disposed of the said application. Therefore, the present petition.

Mr.Patel has appeared for the Industry. He has assailed the impugned judgment. He has submitted that the very Section 33(3) of the Act requires an employer to seek prior permission of the Court/Tribunal before making an order of dismissal against a protected workman. The Industry could not have made the order of dismissal against the Workman unless the permission were granted by the Tribunal. In its evidence also, the Industry had made it clear that the misconduct proved against the Workman was of grave nature. Such a workman could not be continued

in the service of the Industry. Mr.Patel has submitted that it was the duty of the Tribunal to examine the merits of the case and to decide whether the proposed dismissal of the Workman from service was justified or not. He has submitted that after nearly ten years of filing the application the Tribunal has dismissed the same as being premature.

Mr.Raval has supported the impugned judgment. He has submitted that unless the order of dismissal is made the Tribunal would have no occasion to examine the correctness of such order. It is, therefore, imperative that an employer makes an order of dismissal of a workman from service and keeps it in abeyance until the permission required under Section 33(3) of the Act is granted by the concerned Court/Tribunal.

I am unable to agree with Mr.Raval. When the statutory provisions require an employer to seek permission of the Court, this legal provision has been interpreted time and again to mean that the permission is sought before the order of punishment

is made effective, it would be absolutely just for an employer to disclose its intention to punish the workman and to seek permission of the Court before the order of punishment is made. In my opinion, the Tribunal has committed a grave error in dismissing the Permission Application as permature without considering the merits of the application.

In above view of the matter, the petition is allowed. The impugned judgment and order dated 30th June, 2006 passed by the Industrial Tribunal, Ahmedabad in Application (IT) Permission No.285/1997 is quashed and set-aside. The Application IT No.285/1997 is revived, to be decided on merits. The parties shall approach the Tribunal for expeditious disposal of the Application IT (Permission) No.285/1997. Rule is made absolute in the above terms. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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